OVERVIEW OF AN EMPLOYER'S DUTIES

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BRIDGING TO THE FUTURE

CONTENT

EMPLOYMENT STATUS

A basic first step for any employer is to understand the employment status of the staff who work for them. It is essential for an employer to get this right as different categories of staff have different rights under the law and an employer may have more than one category of staff in the workplace at the same time. Failure to get it correct could result in time consuming processes to sort matters out, costly backdated claims for salary or unpaid tax, or worse still having to defend a claim in an Employment Tribunal.

Worker

A person who works under a contract of employment or any other contract whether oral or in writing to perform personally any work or services for another party who is not a client or customer of any profession or business undertakings carried on by the individual.

It covers a wide range of people working under a variety of contractual arrangements such as agency workers, employees, contract workers, franchisees, freelancers and home-workers.

Employee

An employee is a person who has entered into, or works under, a contract of employment. A contract of employment is 'a contract of service or apprenticeship, whether it is express or implied or whether it is oral or in writing'.

The key tests involve the extent to which the following apply:

- What degree of control is exercised by the employer
  - A 'master and servant' relationship
- There can be no substitution – the person must perform the work in person
- Is there a mutual obligation to supply and perform work (mutuality)

Evidence may include:

- What is the purpose of the contract and what did the parties intend when they formed it
- Method of payment – e.g. PAYE
- Provision of equipment, materials, work station etc.
- No responsibility for investment
- Integration into the workplace e.g. attendance at social events or Christmas parties

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Genuinely self – employed

This term is self-explanatory. Here the person is in business for themselves and has no employment rights other than the right not to be discriminated against by virtue of race, sex or disability etc. The person will be responsible for investment of his/her own capital in the business and stands to gain or lose financially from it (i.e. takes a financial risk). The person can choose what work to accept or refuse, can often sub-contract the work and does not have to do the work in person. Work is invoiced, VAT charged (although the person may not necessarily be registered for VAT) and the person pays their own tax (Schedule D) and National Insurance (NI).

Self-employed Contractor

This is a person who works under a contract for services, the same as a genuinely self employed person, but which he/she undertakes to perform or do personally usually without the ability to send or use a substitute. Where the person is reliant on one employer for the majority of their income or he/she is economically dependent on a single employer there is a possibility that the person may be deemed to be a worker (see above) and thus come under employment law. Even where the person pays their own tax and NI the distinction between being self-employed, a worker or an employee becomes extremely blurred.

An employer would argue such a person has no employment rights other than the right not to be discriminated against on the grounds of race, sex or disability etc.

Part-time Worker

This is a person who is not "identifiable as a full-time worker". It is down to the employer to define what is full-time in a particular workplace, and anyone who is not full-time is part-time. It is as simple as that. They have the same statutory rights as a full-time employee.

Casual

This is a person who is employed occasionally, with no continuing contract. Any contract is to provide work for that day, session or period only. There is no obligation on the employer to offer work or on the employee to accept it, on any other occasion. There is no mutuality of obligation and so there is no contract of employment.

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WORKER	EMPLOYEE	SELF-EMPLOYED CONTRACTOR	SELF-EMPLOYED

• Work occasionally for a specific business
• Must do the work in person
• No duty to offer work or accept it
• Tax/NI deducted
• Contract uses terms like casual, freelance, consultant.
	• Must do the work in person (no substitutes)
	• Employer tells employee:
	  • what work to do
	  • when to do it o
	  • where to do it
	• Required to turn up for work
	• Employer deducts Tax/NI (PAYE)
	• Equipment provided
	• Contract of employment
		• Self-employed
		• Can refuse work
		• Pay own tax/NI
		• Must do the work in person
			• Submit bids or quotes for work
			• Not supervised
			• Submit invoices
			• Pay own tax/NI
			• No holiday entitlement
			• Contract ***for*** services

Table 1. Summary of employment status

WORKER RIGHTS	EMPLOYEE ADDITIONAL RIGHTS
• National Minimum wage • Protection from unlawful deductions from wages • Statutory minimum paid annual leave • Statutory minimum rest breaks • 48 hour maximum working week • Protection against unlawful discrimination • Not to be treated less favourably if work part time	• Statutory sick pay • Statutory maternity leave • Statutory paternity leave • Shared parental leave • Minimum notice periods • Claim unfair dismissal • Flexible working • Statutory redundancy pa

Table 2. The difference between worker and employee

It is important not to get the status wrong – it could lead to backdated claims for the minimum wage, a liability for unpaid tax and any associated penalties.

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CONTRACTS

"A contract of employment is an agreement between an employer and employee and is the basis of the employment relationship. Most employment contracts do not need to be in writing to be legally valid but it is better if they are. A contract starts as soon as an offer of employment is accepted. Starting work proves that you accept the terms and conditions offered by the employer" ACAS

Written statement of particulars

Employees must be given a written statement of the main terms and conditions of employment within two months of starting work. This is usually known as the Written Statement of Particulars. This statement must contain the following:

- Name and address of employer
- Name of employee
- Date employment started
- Whether any previous employment counts as part of employee's continuous employment
- Job title and brief description
- Place of work
- Hours of work
- Wages – amount, when and how paid
- Holiday entitlement
- Sick pay arrangements
- Pension scheme?
- Notice
- Whether employment is permanent, temporary or fixed term
- Disciplinary and Grievance rules

Types of contract

PERMANENT	FIXED TERM	ZERO HOURS
• No end date • Contract ends with: 1. Retirement; or 2. Employee leaves; or 3. Employee dismissed	• Set period of time e.g. six months or two years • To complete a piece of work • Until an event takes place	• On call for when work is available • No need to give work • Don't have to accept work if offered • Can't stop zero hours worker accepting work from another employer

Table 3. Different types of contract

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Please note: that employers cannot treat employees on fixed term or part time contracts less favourably than those on permanent contracts.

If an employer renews a fixed term contract which continues for four years the employee automatically becomes a permanent employee.

Contract terms

Express terms: wages, holidays hours of work – usually put in writing

- Implied terms: obvious things like not stealing, hitting/verbally abusing employer or customers/clients, things that are necessary to make the contract work – not usually written
- Statutory terms: terms imposed by law e.g. minimum wage or maternity leave. An employer cannot ask an employee to contract out of statutory terms. Any such agreement would be void.
- Custom and practice: some things such as working practices can become established over time – not usually written

Employing family members

- Cannot give special treatment in terms of pay, promotion and working conditions
- Must pay tax and National Insurance contributions
- Must observe the Working Time Regulations for young family members
- Must have employer's liability insurance that covers young family members
- Check if a workplace pension scheme has to be provided

Changes to contracts of employment

Contracts are not set in stone but can be changed with the agreement of both parties. The employer must give notice of the change in writing within one month.

An employer can include a flexibility clause in a contract allowing the employer to change the terms of a contract although this usually relates to a specific clause such as place of work.

If an employer cannot reach agreement with the employees over a change they can terminate the current contract (after giving the relevant notice) and offer re-engagement on the new terms. However, an employer must be careful to ensure that there has been a full consultation with employees and because termination of a contract is a dismissal the employer must have followed a fair procedure.

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WAGES

An employer must give every worker, by the first pay date, an itemised pay statement which lists gross wages, deductions and net wages.

Wages, and the intervals at which payments are made, is a matter of contract (between employer and worker) however, failure to pay wages will entitle a worker to claim breach of contract or constructive dismissal along with a claim for unpaid wages.

Deductions from wages

Employers cannot make deductions from wages unless:

- the deduction is by statutory power (e.g. tax, NI) or;
- there is a term in the worker's contract or;
- where the worker has agreed in writing to the deduction.

An employer can make a deduction for dishonesty, poor work or misconduct, provided the employee has agreed in advance in writing to the deduction. In some cases, this is included as a written term within the contract. The agreement must be clear and specific.

Retail workers and deductions

There is an additional protection for retail workers which limits deductions for cash shortages or stock deficiencies to a maximum of 10% of any one pay packet, except for the final pay packet.

National Minimum Wage

The National Minimum Wage is a legal minimum wage that all employers must pay. It currently stands at:

- £7.50 per hour for workers/employees aged 25 and over
- £7.05 per hour for those aged 21-24 and
- £5.60 per hour for workers/employees aged 18-20
- £4.05 per hour for under 18s.

The rates change every April.

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What is taken into account when calculating the minimum wage?

- Gross pay i.e. before tax and National Insurance are deducted
    - Any loans, advances of wages, redundancy pay, pension payments are not taken into account.
- Incentive payments including performance related pay, pay for output such as piecework or commission
- Bonuses

What does not count towards the minimum wage?

- Tips paid in cash, collected/distributed centrally, via a tronc system etc
- Overtime and shift premium payments
- Benefits such as meals, luncheon vouchers, fuel, car, medical insurance, employer's pension contributions.

Accommodation

An employer can make a charge for accommodation (where provided) of up to £6.40 per day or £44.80 per week which counts towards the minimum wage.

London Living Wage

The London Living wage is not a legal minimum. It is currently (from November 2017) set at £10.20 per hour and simply reflects the fact that it costs more to live and work in London than in other parts of the country. The Living Wage for the rest of the UK is £8.75 per hour. Many employers pay this higher salary as a matter of good practice or to make a statement that they are a good employer and want to attract better staff.

Sick leave and pay

Employers only have to pay sick leave to employees who have done some work under their employment contract and must be earning a minimum of £113 per week. Statutory Sick Pay (SSP) is payable after an employee has been off work for four or more days in a row and at a rate of £89.35 per week. Payment begins on the fourth day – the first three unpaid days are called waiting days. An employer must pay this for up to 28 weeks. After 28 weeks, an employee would have to apply for Employment and Support Allowance (ESA).

If there is a second period of illness within eight weeks the two periods are seen as linked and the waiting days do not apply.

The vast majority of employers offer some sort of contractual sick pay that tops up the SSP rate to the full contractual salary. The number of weeks offered for contractual sick pay is usually based on length of service.

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Sickness and annual leave

If an employee becomes sick before a scheduled period of annual leave an employer must allow the leave to be re-scheduled for a later point in time.

Please note that (statutory) paid annual leave continues to accrue during sick leave even if the person is off sick for a year.

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STATUTORY NOTICE PERIODS

Employers have a statutory duty to give notice of termination of contract. The statutory minimum periods are as follows:

LENGTH OF CONTINUOUS SERVICE	LENGTH OF NOTICE REQUIRED
Up to one month's service	No requirement to give a minimum notice period
One month to two years	One week's notice
Two complete years	Two weeks
Three complete years	Three weeks
And one week's notice for each additional complete year of continuous service thereafter up to a maximum of 12 weeks	

Table 4. Statutory notice periods

An employer must pay the contractual salary during the notice period.

It is common for contracts to specify one month's notice or often in the case of more senior positions three months. In this situation, the period of notice will be the statutory or the contractual period, whichever is the greater.
National Minimum Wage

Payment In Lieu of Notice

Employers will often pay an employee for their notice period but not ask them to actually work during the notice period. This is known as Payment In Lieu of Notice and is very common especially where an employee has been dismissed or made redundant.

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TIME OFF

Maximum working times

Employers must observe the following statutory rights which apply to all workers and employees:

- A maximum average working week of 48 hours which is calculated as an average over a 4-month period
- A maximum average of 8 hours work each day for night workers. Again the average is to be determined over four months but with exceptions depending on the nature of the work. Night work is defined as being between 11.00pm and 6.00am and night workers are defined as those who normally work for at least three hours during these times
- Health assessments for night workers

Workers have the right to opt out of the above arrangements and work more than 48 hours but employers cannot force workers to do so. Employers cannot enforce opting out as a term in a contract or insist on an agreement to work longer hours before an offer of a job is made.

Rest breaks

There are similar rules around rest breaks:

- Minimum rest breaks of 20 minutes when the working day is more than 6 hours (there is a 30 minutes break for teenage workers during a working day of at least four and a half hours).
- Daily rest periods of 11 hours in each 24 hours; weekly rest periods of a minimum 24 hours in each 7 days.
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Paid annual leave

An employer must give an employee (or worker) who works five days a week a minimum of 5.6 weeks paid annual leave i.e. 28 days. This can include Bank and Statutory holidays but employers are free to offer additional paid leave as part any contractual agreement.

Paid annual leave should be calculated on a pro rata basis for part-time workers e.g. someone who works three days a week would be entitled to 3/5 X 28 = 16.8 days rounded up to the nearest full day i.e. 17 days.

Leave must be taken in the leave year - it cannot be carried over to the next year. However, where an employer offers above the statutory minimum leave any untaken 'contractual' leave may be carried forward with the employer's agreement. Most employers limit this to a maximum of five days.

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MATERNITY RIGHTS

Employers must:

- Allow time off for antenatal care
- Protect pregnant women and new mothers from health and safety risks at work
- Not dismiss a woman because she is pregnant
- Allow 52 weeks maternity leave for all pregnant women
- Accept their right to return to work.

Time Off for Ante-natal care

Employers must allow all pregnant women to have reasonable paid time off to attend ante-natal care appointments regardless of their length of service or the hours they work. Employers must also give fathers unpaid time off to accompany the pregnant woman to two ante-natal appointments.

Health and safety

Employers have specific duties towards pregnant women and new (including breastfeeding) mothers. These include a duty to carry out an assessment of potential risks to the health and safety of a new or expectant mother or that of her baby.

It is automatically unfair and discriminatory to dismiss a woman in order to avoid complying with a health and safety requirement or recommendation or where the woman cannot continue working because of health and safety risks.

Protection against dismissal

Pregnancy and maternity is a protected characteristic under the Equality Act 2010. An employer cannot dismiss a woman for any reason connected with pregnancy or maternity absence. This applies from the beginning of the pregnancy to the end of the maternity leave period. It applies irrespective of length of service, hours of work or size of company.

Maternity leave

All women employees are entitled to 52 weeks Maternity Leave. There is no qualifying period.

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The 52 weeks is divided into two halves:

Ordinary Maternity Leave

The first 26-week period (six months) of maternity leave is referred to as 'Ordinary Maternity Leave' and can begin up to 11 weeks before the expected week of childbirth. All contractual rights, except salary, continue to accrue during this period as if the woman was not absent.

Additional Maternity Leave

The second 26-week period of maternity leave is referred to as 'Additional Maternity Leave' and follows on seamlessly from Ordinary Maternity Leave. There is no qualifying period for Additional Maternity Leave. All contractual rights (except salary) including non-pay benefits continue to accrue during Additional Maternity Leave

Returning to Work

Employers should note that a woman returning to work after Ordinary Maternity Leave must be allowed to return to the same job in which she was employed before her leave began with the same terms and conditions – unless a redundancy situation has occurred.

A woman returning after Additional Maternity Leave has the same rights except if it is not reasonably practicable to return to the same job. In that case the employer must provide another suitable and appropriate job.

A woman returning from maternity leave simply has to turn up for work. If she wants to return earlier than the agreed date she must give her employer eight weeks' notice.

Statutory Maternity Pay (SMP)

Statutory Maternity Pay is payable for 39 weeks (for women whose babies were born on or after 1 April 2007).

To qualify a woman must have worked for her employer for 26 weeks by the 15th week before the expected week of childbirth and in the 8 weeks prior to the 15th week before EWC must have earned at least £113pw. She must also have given her employee due notice of the baby.

SMP is paid at:

* 90% of employee's normal salary for the first 6 weeks and;

* a flat rate of £140.98 (from 02 April 2017) for the remaining 33 weeks

Employers must pay SMP as part of the woman's salary; it begins when a woman stops work up to a maximum of 11 weeks before EWC.

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Maternity Allowance (MA)

If a woman does not qualify for SMP she may be able to claim Maternity Allowance from the Department for Work and Pensions (DWP). It is paid by JobcentrePlus at a flat rate of £140.98 (from 02 April 2017) from 11 weeks before the EWC for up to 39 weeks.

Keeping in touch

An employer has the right to keep in touch with an employee who is on maternity leave for matters such return to work. An employee on maternity leave can come in to work on up to 10 Keeping In Touch days (KIT) usually for things such as a staff awayday or a major consultation.

Enhanced Contractual Maternity Pay

The above information details what employers must provide as a statutory minimum. Many good employers offer better contractual terms to their employees such as thirteen weeks maternity leave on full pay, thirteen weeks on half pay and thirteen weeks at the statutory rate. If an employer decides to offer better terms they must be sure that the business can afford it and, where necessary, also find the resources to pay for temporary staff to cover

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PARENTAL RIGHTS

Paternity Leave & Pay

Working fathers are entitled to two weeks paternity leave paid at the same rate as SMP, (£140.98). The leave cannot be taken as single days and must be taken within 56 days of the birth of the child. There is a qualifying period of 26 weeks continuous employment with the same employer by 15th week before the expected week of childbirth and the person taking the leave must be the child's biological father, the mother's husband or partner and must have responsibility for bringing up the child.

Adoptive Parents Leave & Pay

Employers should be aware that they have duties to adoptive parents which are broadly the same as the duties around maternity/paternity leave and pay.

Parental Leave

Employers must allow parents to take time off work to look after a child or make arrangements for a child's welfare. The purpose is to allow parents to spend more time with their children and strike a better balance between their work and family. Employers do not have to pay parents during parental leave.

The leave applies to employees who have a baby (or have a child placed for adoption) and who have completed one year's continuous service with their employer by the time they wish to take the leave. The leave applies to both mothers and fathers.

Employees are allowed 18 weeks per child (so 36 weeks if twins are born). This must be taken by the child's 18th birthday (the same applies to parents of a child placed for adoption).

The employer and employee normally agree between them when the leave should be taken; this is usually in blocks or multiples of one week with a maximum of 4 weeks in a year.

Shared Parental Leave

Shared Parental Leave and Statutory Shared Parental Pay is a system where the mother and father of a child can share out the rights to maternity/paternity leave and pay between them. The aim is to give parents more flexibility in how to share the care of their child in the first year following birth or adoption. Parents will be able to share a pot of leave, and can decide to be off work at the same time and/or take it in turns to have periods of leave to look after the child.

It is a complex procedure for employers especially where the parents are employed by different organisations. Employers cannot refuse.

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The following extract from the ACAS guide gives a broad overview:

- Employed mothers will continue to be entitled to 52 weeks of Maternity Leave and 39 weeks of statutory maternity pay or maternity allowance.
- If they choose to do so, an eligible mother can end her maternity leave early and, with her partner or the child's father, opt for Shared Parental Leave instead of Maternity Leave. If they both meet the qualifying requirements, they will need to decide how they want to divide their Shared Parental Leave and Pay entitlement.
- Paid Paternity Leave of two weeks will continue to be available to fathers and a mother's or adopter's partner.

Additional information and guidance can be found at:
Shared Parental Leave and Pay
ACAS Shared Parental Leave and Pay

Time off for dependents

Employers must allow employees the right to take a reasonable period of time off work to deal with an emergency involving a dependent. They cannot dismiss or victimise the employee for doing so. The aim is to allow employees to deal with an unexpected or sudden problem and make any necessary longer-term arrangements.

The following are a few examples of such situations:

- If a dependent falls ill or has been involved in an accident or been assaulted. This includes where the victim is hurt or distressed rather than physically injured
- When a partner is having a baby
- To deal with the death of a dependent e.g. to make funeral arrangements or to attend the funeral
- To deal with an unexpected breakdown in care arrangements for a dependent such as the childminder failing to turn up

Dependents are the partner, child or parent of the employee or somebody who lives with the employee as part of their family.

There is no set limit to the amount of time off which can be taken. It will usually be a day or two at the most. Employers do not have to pay employees for this time off.

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Right to request flexible hours

All employees with 26 weeks' continuous service have the right to request flexible working. The employer cannot refuse unless there is a good business reason. The employee must be allowed the right to appeal.

Flexible working may include part-time working, job shares, annualised hours, compressed hours, flexitime, home working, term time working, staggered hours etc.

Changes following such a request constitute a permanent change to the contract of employment. Any request to change back to the original working arrangements will also require a change to the contract of employment (unless agreed at the time of the original change).

Reasons for refusal

Reasons why an employer could refuse a request for flexible working include the following examples:

- The burden of additional costs
- An inability to reorganise work amongst existing staff
- An inability to recruit additional staff
- A detrimental impact on quality
- A detrimental impact on performance
- A detrimental effect on ability to meet customer demand
- Insufficient work for the periods the employee proposes to work
- Planned structural changes to the business

For the ACAS guidance see: www.acas.org.uk

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DISMISSAL

An employee is dismissed if one of the following occurs:

- The employer terminates the employment contract with or without notice
- A fixed term contract is not renewed
- Forced resignation (where a worker resigns as a result of their employer saying that they must resign or else be dismissed)
- Constructive dismissal (the employee resigns in response to a significant and fundamental breach of the employment contract)
- Deemed dismissal (a woman is not allowed to return to work after maternity leave)
- The employer claims there has been a self-dismissal
- A refusal to re-employ after a takeover

Wrongful Dismissal

A wrongful dismissal takes place when an employer terminates employment contrary to the terms of the contract of employment. The employee can bring a claim of breach of contract – there is no service qualification for bringing a claim of wrongful dismissal.

Fair reasons for dismissal

There are potentially 5 fair reasons for dismissal but an employer will have to show that the reason for dismissal was one or more of them.

The potentially fair reasons are:

- A reason relating to the employee's capability (or qualification) to do the work they were employed to do;
- A reason relating to the employee's conduct;
- The employee is redundant;
- A contravention of duty or restriction imposed by or under an enactment (e.g. someone whose job involves driving who loses their licence);
- Some other substantial reason (examples include a refusal to sign a restrictive covenant of 12 months, 3 months absence due to imprisonment constituted a substantial reason).

When is a dismissal unfair

Even where the reason for dismissal is one of the potentially fair reasons listed above an employer still has to demonstrate that they have acted reasonably in reaching that decision. An Employment Tribunal must consider whether the reasons that an employer gives for dismissal are fair. In doing so it will assess the following:

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- The employer's reason for dismissal;
- Did the employer base its decision on the facts known to it at the time;
- Has the employer shown a potentially fair reason for the dismissal;
- Has the employer acted reasonably in viewing it as adequate reason for dismissal.

Where the decision to dismiss is based on capability an employer will be expected to have issued a series of warnings indicating at each stage what standards are expected, setting targets for those standards to be reached and having given due warning of the consequences of failure to achieve those standards. (See also section on 'Sickness' below for dismissals relating to absence from work)

Where dismissal relates to conduct the employer will have to show:

- That there has been reasonable investigation
- That having heard the evidence there is a genuine belief (on the balance of probabilities) that the employee was guilty of the misconduct
- That dismissal was within a range of reasonable responses

In all cases the employer should have followed the ACAS code of practice on discipline and grievance.

Automatically Unfair Dismissal:

Some dismissals are automatically unfair regardless of whatever reasons an employer may put forward e.g.

- Trade union membership or activities or non-membership of a trade union
- Seeking to assert or enforce a statutory right e.g.
  - written statement of particulars
  - itemised pay statement
  - unlawful deductions from pay
  - time off for antenatal care
  - time off to look for work prior to redundancy
- Pregnancy & maternity dismissals
- Health & safety
- Refusing to do shop or betting work on a Sunday (protected shopworkers)
- Employee representative
- Trustees of occupational pension schemes
- Taking parental leave
- Taking time off to care for dependants
- Taking lawfully organised industrial action
- Qualifying for the minimum wage
- Exercising rights under working time i.e. refusing to work beyond a 48 hour week
- Making a protected disclosure e.g. a claim of discrimination

The above list is not exhaustive and continues to increase as new legislation comes on line.

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Dismissal for Sickness

Dismissal for sickness can be contentious and can give the employer a bad name in the eyes of the workforce. However, dismissals for sickness can be fair where the level or length of sickness absence is unacceptable even if the sickness is genuine. The employer must have acted reasonably and circumstances such as the number of employees or the employer's ability to cover sickness will dictate what is reasonable. For example in a small firm if the only driver were to be off sick for a long period it may be impossible for the firm to operate without a replacement.

Types of sickness absence

There are two types of sickness absence:

- A series of short term separate absences often for different reasons
- A single continuous absence usually for a single medical condition

While it is possible for an employer to dismiss an employee in both of the above situations the approach must be different.

Dismissal for Long term sickness

There is little guidance for employers as to when sickness becomes long term – many employers decide to begin action when an employee has been sick for a month. The question is how much longer the employee is likely to be off work and whether the employer can continue to cover that absence. The first step will be to ascertain the nature of the illness and a prognosis of the likely duration of the illness. An employer should obtain a medical report on the employee's likelihood of return to work and whether the employee will be able to do the same work as before; this should be followed by a consultation with the employee on the details of the report. Good practice suggests that where possible, the employer should have looked at alternative employment or, where the employee falls under the Disability section of the Equality Act, making reasonable adjustments.

Where long term sickness is likely to bring an employee under the terms of the Equality Act an employer must have complied with the provisions of the Act before taking steps to dismiss.

Any decision to dismiss must take into account the nature and likely duration of the illness, the need for the employee to do the work or the difficulty in providing cover. In addition the situation will vary with the complexity of the job and the size of the organisation.

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Dismissal for Short term, frequent absences

In this situation an employer should have discussed any underlying medical reasons for the absence with the employee and have informed the employee what level of attendance was expected. The employer will normally have followed the internal disciplinary procedure and issued warnings with targets for improvement over a specific period. A medical report may be obtained and, if the workplace has a 'capability code' it should have been followed. Again the employer is expected to have acted reasonably in keeping the employee informed that levels of sickness were unacceptable and explained what the consequences of continued absence were likely to be (i.e. dismissal).

Employment Tribunals – service qualifications

An employee who believes they have been unfairly dismissed can bring a claim of unfair dismissal to an Employment Tribunal.

An employee who starts work after 06 April 2012 must have at least two year's continuous service with their employer. A one year service requirement still applies to employees engaged before 06 April 2012.

An employer would be wise to take the length of service into consideration when deciding whether to dismiss an employee and the timing of any such dismissal.

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RESOURCES

The Government website that covers an A-Z of employing people.

The website of the Advisory, Conciliation and Arbitration Services.

The Equality and Human Rights Commission

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